

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZULEIKA A. ROSARIO,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CIVIL ACTION NO. 23 Civ. 5826 (ER) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

On July 5, 2023, pro se Plaintiff Zuleika Rosario (“Ms. Rosario”) commenced this action pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), seeking review of the denial by the Commissioner of the Social Security Administration (the “Commissioner”) of her applications for Supplemental Security Income and Disability Insurance Benefits. (ECF No. 1 (the “Complaint”)). Ms. Rosario requests that the Court “modify or reverse the decision of the [Commissioner] and grant [Ms. Rosario] maximum monthly Social Security benefits or Supplemental Security Income benefits as allowable under the Social Security Act.” (Id. at 2 (the “Request”)).

On October 18, 2023, the Commissioner filed the certified administrative record. (ECF No. 11 (the “Record”)). Pursuant to the Court’s Standing Order applicable to actions seeking judicial review of final decisions by the Commissioner, Ms. Rosario’s brief in support of her requested relief was due “within 30 days after” the Commissioner filed the Record, i.e., by November 17, 2023. (ECF No. 3 at 1). The Standing Order also provides that, “if a plaintiff who is appearing pro se fails to file a brief for the requested relief within the [required] time period . .

. , the Commissioner must nonetheless file a brief and serve it on the plaintiff within 30 days after the plaintiff's brief was due[.]” (Id. at 2). “If the plaintiff disagrees with the disposition requested by the Commissioner, the plaintiff may file an opposition brief and serve it on the Commissioner within 14 days after service of the Commissioner’s brief[.]” (Id.)

Ms. Rosario did not file her brief by the November 17, 2023 deadline. Accordingly, on December 18, 2023, the Commissioner filed and served his motion, arguing that the Court should deny the Request and affirm the Commissioner’s denial of Ms. Rosario’s applications. (ECF No. 16 (the “Commissioner’s Motion”); see ECF No. 17). Per the Standing Order, Ms. Rosario’s response (the “Response”) to the Commissioner’s Motion was due by January 2, 2024.

On January 10, 2024, Ms. Rosario having failed to file her Response, the Court advised Ms. Rosario that it would “afford her one final opportunity to file a Response” and directed her to do so by February 9, 2024. (ECF No. 18 at 2 (the “Jan. 10 Order”)). The Court warned Ms. Rosario that “her failure to file a Response will result in the Court resolving her claims based on the Commissioner’s Brief alone, and may result in the Court granting the Commissioner’s requested relief and dismissing this action with prejudice.” (Id.) On January 11, 2024, the Commissioner served Ms. Rosario with a copy of the Jan. 10 Order, which the Clerk of Court also mailed to Ms. Rosario on January 12, 2024. (See ECF No. 19; ECF min. entry Jan. 12, 2024). To date, Ms. Rosario has not filed her Response or otherwise communicated with the Court.

Accordingly, the Court deems the Request and the Commissioner’s Motion to be fully briefed and will issue a Report and Recommendation in due course.

The Commissioner shall promptly serve a copy of this Order on Ms. Rosario and file proof of service by **February 28, 2024**.

The Clerk of Court is respectfully directed to mail a copy of this Order to Ms. Rosario.

Dated: New York, New York
February 26, 2024

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge